

**ASSEMBLY BILL**

**No. 1392**

**Introduced by Assembly Member Hertzberg**

February 26, 1999

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An act to amend Sections 6931 and 19381 of, and to add Sections 6931.5 and 19381.5 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1392, as introduced, Hertzberg. Taxation: judicial relief.

The California Constitution, the Sales and Use Tax Law, and provisions pertaining to the administration of franchise and income tax laws prohibit the issuance of any injunction, writ of mandate, or other legal or equitable process to prevent or enjoin the assessment or collection of those taxes, but permit an action to be maintained after the tax is paid to recover the tax claimed to be illegal.

This bill would permit an action to determine the validity of an amount of any of those taxes if the plaintiff has filed a statement of grounds, as provided, with the Attorney General, and either paid the amount due or filed a good and sufficient bond to guarantee payment of the amount due and other amounts, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6931 of the Revenue and Taxation Code is amended to read:

6931. (a) No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this ~~State~~ *state* or against any officer of the ~~State~~ *state* to prevent or enjoin the collection under this part of any tax or any amount of tax required to be collected.

(b) *An action may be maintained in accordance with Section 6931.5 to determine the validity of an amount of tax. During the pendency of any action as so described, the collection of any amount of tax that is the subject of that action shall be limited as specified by Section 6931.5.*

SEC. 2. Section 6931.5 is added to the Revenue and Taxation Code, to read:

6931.5. (a) Notwithstanding any other provision of law, an action to determine the validity of an amount of tax or any other amount assessed by the board may, subject to subdivisions (b) and (c), be brought against the board if the plaintiff does both of the following:

(1) Files with the Attorney General not later than the fifth day before the date the action is filed a statement of the grounds upon which the validity of the tax or any other assessed amount is challenged.

(2) Does either of the following:

(A) Pays to the board all amounts due from the applicant to the state.

(B) Files with the board a good and sufficient bond to guarantee the payment of the amount due and any additional amount, including interest, that may reasonably be expected to become due during the pendency of the action.

(b) The amount and terms of the bond and the sureties on the bond authorized by subparagraph (B) of paragraph (2) of subdivision (a) must be approved by the judge of the court hearing the action and the Attorney General, and that approval shall not be unreasonably withheld. If approval is obtained in accordance with the

preceding sentence, no further collection of any assessed amount that is the subject of the action shall be made during the pendency of that action.

(c) The plaintiff, or the agent or attorney of the plaintiff, shall state under oath that both of the following have occurred:

(1) The statement required by paragraph (1) of subdivision (a) was filed.

(2) The payment of all amounts due was made or a bond has been approved and filed in accordance with this section.

SEC. 3. Section 19381 of the Revenue and Taxation Code is amended to read:

19381. (a) No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any officer of this state to prevent or enjoin the assessment or collection of any tax under this ~~part; provided, however,~~ ~~that any part.~~

(b) *An action with respect to disputed taxes may be maintained in accordance with either of the following:*

(1) Any individual after protesting a notice or notices of deficiency assessment issued because of his or her alleged residence in this state and after appealing from the action of the Franchise Tax Board to the State Board of Equalization, may within 60 days after the action of the State Board of Equalization becomes final commence an action, on the grounds set forth in his or her protest, in the Superior Court of the County of Sacramento, in the County of Los Angeles, or in the City and County of San Francisco against the Franchise Tax Board to determine the fact of his or her residence in this state during the year or years set forth in the notice or notices of deficiency assessment. No tax based solely upon the residence of such an individual ~~shall~~ *may* be collected from that individual until 60 days after the action of the State Board of Equalization becomes final and, if he or she commences an action pursuant to this section, during the pendency of the action, other than by way of or under the jeopardy assessment provisions of this part.

(2) *An action may be maintained in accordance with Section 19381.5 to determine the validity of an amount of tax. During the pendency of any action as so described, the collection of any amount of tax that is the subject of that action shall be limited as specified by Section 19381.5.*

SEC. 4. Section 19381.5 is added to the Revenue and Taxation Code, to read:

19381.5. (a) Notwithstanding any other provision of law, an action to determine the validity of an amount of tax or any other amount assessed by the Franchise Tax Board may, subject to subdivisions (b) and (c), be brought against the Franchise Tax Board if the plaintiff does both of the following:

(1) Files with the Attorney General not later than the fifth day before the date the action is filed a statement of the grounds upon which the validity of the tax or any other assessed amount is challenged.

(2) Does either of the following:

(A) Pays to the Franchise Tax Board all amounts due from the applicant to the state.

(B) Files with the Franchise Tax Board a good and sufficient bond to guarantee the payment of the amount due and any additional amount, including interest, that may reasonably be expected to become due during the pendency of the action.

(b) The amount and terms of the bond and the sureties on the bond authorized by subparagraph (B) of paragraph (2) of subdivision (a) must be approved by the judge of the court hearing the action and the Attorney General, and that approval shall not be unreasonably withheld. If approval is obtained in accordance with the preceding sentence, no further collection of any assessed amount that is the subject of the action shall be made during the pendency of that action.

(c) The plaintiff, or the agent or attorney of the plaintiff, shall state under oath that both of the following have occurred:

(1) The statement required by paragraph (1) of subdivision (a) was filed.

1     (2) The payment of all amounts due was made or a  
2     bond has been approved and filed in accordance with this  
3     section.

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